

BEFORE THE
STATE BOARD OF PHARMACY
STATE OF MISSOURI

MISSOURI BOARD OF PHARMACY,)
)
 Petitioner,)
)
 v.) Case No. 10-0259 PH
)
CYNTHIA RICHMOND, R.PH.,)
)
 Respondent.)

**FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DISCIPLINARY ORDER**

This matter appears before the Missouri Board of Pharmacy (“Board”) pursuant to a Consent Order issued by the Administrative Hearing Commission as a result of a Joint Motion For Consent Order, Joint Stipulation of Facts and Conclusions of Law, and Waiver of Hearing Before the Administrative Hearing Commission (“Joint Motion”) between Missouri Board of Pharmacy and Cynthia Richmond, R.Ph., which were incorporated into the record of this matter. See page 6 of the transcript. Each Board member participating in this decision read the Consent Order issued by the Administrative Hearing Commission and the Joint Motion For Consent Order, Joint Stipulation of Facts and Conclusions of Law, and Waiver of Hearing Before the Administrative Hearing Commission, as well as each exhibit and considered each exhibit in reaching the decision reflected in this Order. See transcript pages 6 and 7.

Findings of Fact

1. The Board set this matter for hearing and served notice of the disciplinary hearing upon Respondent.
2. Pursuant to notice and Section 621.110, RSMo, this Board held a hearing on April 20, 2011, at the Hilton Garden Inn, Columbia, Missouri, for the purpose of determining the appropriate disciplinary action against the pharmacist license of

Respondent. Cynthia Richmond appeared in person and with counsel, Jennifer S. Tucker. The Board was represented by Daryl Hylton. See transcript page 6.

3. All Board members participating in the decision of the Board were present throughout the disciplinary hearing.

4. The Board is an agency of the state of Missouri created and established pursuant to Section 338.110, RSMo, for the purpose of executing and enforcing the provisions of Chapter 338, RSMo.

5. Respondent is licensed by the Board, License No. 042919, which license was current and active at the time of the incidents which form the basis of the charge. See page 4 of the transcript.

6. The Joint Motion had certain provisions regarding the facts that the parties agreed give cause to discipline the license of Respondent. See Consent Order of the Administrative Hearing Commission dated December 8, 2010. The parties agreed at the disciplinary hearing that cause existed for the Board to impose discipline on Respondent. See pages 7 and 8 of the transcript. The Board incorporates by reference the facts contained in that Joint Motion into this Order.

7. Exhibit 1, pages 3-11, numbered paragraphs 1-43, with attached Exhibits A-J, were admitted into evidence and considered by the Board in issuing its decision reflected in this Order. The parties agreed that only paragraphs 1-43 at pages 3-11 of Exhibit 1 should be admitted into evidence and considered by the Board in deciding the discipline reflected in this Order. See pages 17-19 of the transcript.

8. As pharmacist-in-charge (PIC) at the University of Missouri Veterinary Medical Teaching Hospital Pharmacy (VMTH), Respondent was responsible for maintaining the security at the pharmacy. See the Joint Motion.

9. Ms. Richmond warned her employer that practices at the pharmacy violated Chapter 338, but due to financial restraints, as well as other matters, the pharmacy continued to allow technicians access to the pharmacy in the absence of a licensed pharmacist. Ms. Richmond knew it was inappropriate to allow technicians to have keys to the narcotics cabinet when no pharmacist was present. See pages 26 and 27 of the transcript. Ms. Richmond knew that practice violated Chapter 338. See page 27 of the transcript.

10. Ms. Richmond discovered shortages of controlled substances and discovered tampering of controlled substances in the pharmacy and Ms. Richmond reported these violations to her superiors at the VMTH. See Exhibit 1 and pages 26, 27, 38 and 39 of the transcript.

11. At Ms. Richmond's request, the pharmacy added security features to the pharmacy, changed personnel policies, as well as added additional inventory techniques to assist the pharmacy to comply with Chapter 338. See pages 27-30 of the transcript.

12. The parties agreed that the Board has authority to discipline the pharmacist license of Ms. Richmond as provided in Section 338.055, but that such discipline would not exceed three years' probation. See pages 7 and 8 of the transcript. Ms. Richmond's attorney suggested censure as appropriate discipline, but in the event that the Board imposed probation, that Ms. Richmond be allowed to continue to serve as PIC at the VMTH. See pages 45-50 of the transcript.

13. Respondent presented information regarding discipline imposed by the Board on other pharmacists and the Board considered such information in determining the discipline it imposes in this Order. See Exhibit 3.

Conclusions of Law

14. The Board has jurisdiction over this proceeding in that the parties have agreed that the Board has cause to discipline the license of the Respondent. State Board of Registration for the Healing Arts v. Masters, 512 S.W.2d 150, 160-161 (Mo. App., K.C.D. 1974).

15. The Board has jurisdiction to take disciplinary action against Respondent in that the parties have agreed that such action may be taken.

16. Respondent's license to practice as a pharmacist, numbered 042919, is subject to revocation, suspension, probation, or censure by the Board pursuant to the provisions of Section 338.055.2(6) and (15), RSMo. However, as set forth in paragraph 12, the Board agreed to limit the discipline to not more than three years' probation. The Board determined the discipline imposed as set forth below based upon the facts of this case, and in consideration of the testimony presented at the hearing.

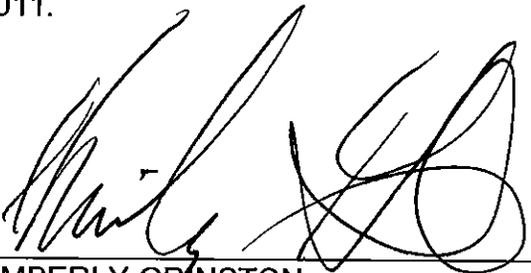
Disciplinary Order

THEREFORE, having considered all of the evidence before this body, and giving full weight to the Joint Motion for Consent Order, Joint Stipulation of Facts and Conclusions of Law, and Waiver of Hearing Before the Administration Hearing Commission and the Administrative Hearing Commission's Consent Order presented to the Board, it is the ORDER of the Missouri Board of Pharmacy that the pharmacist license issued to Respondent, numbered 042919, is hereby PUBLICLY CENSURED.

The Board of Pharmacy will maintain this Order as an open record of the Board as provided in Chapters 338, 610, 324, RSMo.

ENTERED THIS 21st DAY OF JUNE, 2011.

(BOARD SEAL)



KIMBERLY GRINSTON
EXECUTIVE DIRECTOR
MISSOURI BOARD OF PHARMACY

Before the
Administrative Hearing Commission
State of Missouri

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MISSOURI BOARD
OF PHARMACY



MISSOURI BOARD OF PHARMACY,

Petitioner,

vs.

CYNTHIA RICHMOND,

Respondent.

No. 10-0259 PH

CONSENT ORDER

The licensing authority filed a complaint. Section 621.045, RSMo Supp. 2009, gives us jurisdiction.

On December 8, 2010, the parties filed a "Joint Motion for Consent Order, Joint Stipulation of Facts and Conclusions of Law, and Waiver of Hearing Before the Administrative Hearing Commission." Our review of the document shows that the parties have stipulated to certain facts and waived their right to a hearing before us. Because the parties have agreed to these facts, we incorporate them into this order and adopt them as stipulated. *Buckner v. Buckner*, 912 S.W. 2d 65, 70 (Mo. App., W.D. 1995). We conclude that the licensee is subject to discipline under § 338.055.2(6) and (15), RSMo. We incorporate the parties' proposed findings of fact and conclusions of law into this Consent Order. We certify the record to the licensing agency under § 621.110, RSMo Supp. 2009.

The only issue before this Commission is whether the stipulated conduct constitutes cause to discipline the license. The appropriate disciplinary action is not within our power to decide; that is subject to the licensing authority's decision or the parties' agreement. Section 621.110, RSMo Supp. 2009.

SO ORDERED on December 8, 2010.


SREENIVASA RAO DANDAMUDI
Commissioner

BEFORE THE
ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI

FILED

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ADMINISTRATIVE HEARING
COMMISSION

MISSOURI BOARD OF PHARMACY)

Petitioner,)

v.)

CYNTHIA RICHMOND)

Respondent.)

Case No. 10-0259 PH

**JOINT MOTION FOR CONSENT ORDER,
JOINT STIPULATION OF FACTS AND CONCLUSIONS OF LAW, AND
WAIVER OF HEARING
BEFORE THE ADMINISTRATIVE HEARING COMMISSION**

Respondent Cynthia Richmond (“Richmond”) and Petitioner Missouri Board of Pharmacy (“the Board”) enter into this *Joint Motion for Consent Order, Joint Stipulation of Facts and Conclusions of Law, and Waiver of Hearing Before the Administrative Hearing Commission* (“Joint Stipulation”) for the purpose of resolving the Complaint filed against Respondent. Pursuant to the rules governing practice and procedure before the Administrative Hearing Commission (“Commission”)(1 CSR 15-3.440(3)) and pursuant to the terms of § 536.060, RSMo¹, as it is made applicable to the Commission by § 621.135, RSMo, the parties move for a consent order and waive the right to a hearing and decision in the above-styled case by the Commission, and jointly stipulate and agree

that a final disposition of the issues before the Commission may be effectuated as described below.

Richmond's acknowledges that she understands the various rights and privileges afforded her by law, including the right to a hearing of the charges against her; the right to appear and be represented by legal counsel; the right to have all charges proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing against her at the hearing; the right to present evidence on her behalf at the hearing; the right to a decision upon the record of the hearing by a fair and impartial administrative hearing commissioner concerning the charges pending against her, the right to a ruling on questions of law by the Administrative Hearing Commission; the right to a claim for attorney fees and expenses; and the right to obtain judicial review of the decision of the Administrative Hearing Commission. Being aware of these rights provided her by operation of law, Richmond knowingly and voluntarily waives each and every one of these rights and freely enters into this Joint Stipulation. Richmond further agrees to abide by the terms of this document as they pertain to her.

Richmond's acknowledges that she received a copy of the Complaint in this case, which was filed with the Commission on February 22, 2010. Richmond stipulates that the factual allegations contained in this Joint Stipulation are true and stipulates with the Board that Richmond's license as a pharmacist, license no. 042919, is subject to

¹All references are to the 2000 Revised Statutes of Missouri unless otherwise noted.

disciplinary action by the Board in accordance with the provisions of Chapter 621, RSMo, and §338.055, RSMo.

I. JOINT STIPULATION

Based upon the foregoing, the Board and Richmond jointly stipulate to the following findings of fact and conclusions of law in lieu of the facts and conclusions of law as alleged in the Complaint filed in this case, and request that the Commission adopt the Joint Proposed Findings of Fact and the Joint Proposed Conclusions of Law as the Commission's Findings of Fact and Conclusions of Law.

JOINT PROPOSED FINDINGS OF FACT

1. The Board is an agency of the State of Missouri created and established pursuant to §§ 338.110.1 and 338.140, RSMo, for the purposes of executing and enforcing the provisions of §§ 338.010 to 338.198, RSMo.
2. Cynthia Richmond is licensed as a pharmacist, license No. 042919. Richmond's license was current and active at all times material herein.
3. University of Missouri Veterinary Medical Teaching Hospital Pharmacy (VMTH Pharmacy) is a licensed pharmacy, license no. 004815. VMTH Pharmacy's license is and was at all times relevant to this action current and active.
4. VMTH Pharmacy is located at the University of Missouri Veterinary Teaching Hospital, in Columbia Missouri.

5. Cynthia Richmond, ("Richmond"), has been the Pharmacist-in-Charge, ("PIC"), since June 1, 2004, and at all times material herein.

6. Jonathan Dixon, ("Dixon"), began to work at VMTH Pharmacy in and around September 2004, as a pharmacy technician, and at all times material herein.

7. During Richmond's tenure as PIC, Dixon was allowed to maintain keys to the narcotic's cabinet.

8. Dixon had access to the narcotic's cabinet after-hours, unsupervised.

9. Candace Power, ("Power"), worked at VMTH Pharmacy as a pharmacy technician at all times relevant and herein.

10. During Richmond's tenure as PIC, Power was allowed to maintain keys to the narcotic's cabinet.

11. Power had access to the narcotic's cabinet after-hours, unsupervised.

12. During a period ending May 23, 2008, Dixon misappropriated multiple doses of morphine from the VMTH Pharmacy.

13. On or about May 23, 2008, Dixon took morphine to the "hood" to prepare morphine drips.

14. Richmond accessed the "hood" after Dixon vacated the area.

15. Richmond found two open, multiple dose vials of morphine in the area.

16. Richmond proceeded to investigate the narcotics cabinet and found seven multiple dose vials of morphine that had the tamper-proof seal broken at the bottom of the boxes.

17. Richmond examined all of the multiple dose vials in the narcotic's cabinet and found multiple items that had been tampered with.

18. On or about May 29, 2008, Richmond submitted loss reports to the Bureau of Narcotics and Dangerous Drugs and the Drug Enforcement Administration for the following drug losses:

- a. Fentanyl
- b. Hydromorphone
- c. Morphine
- d. Phenobarbital

19. On or about June 3, 2008, Richmond submitted an additional loss report for the drugs listed below. The loss report was accompanied by a letter indicating the listed products exhibited no evidence of tampering, but were not trusted for dispensing.

- a. Buprenorphine
- b. Butorphanol
- c. Diazepam
- d. Ketamine
- e. Midazolam

20. Fentanyl is a Schedule II controlled substance pursuant to § 195.017.4(2)(j), RSMo, and 19 CSR 30-1.002.1(B)(2)(J).

21. Hydromorphone is a Schedule II controlled substance pursuant to § 195.017.4(1)(a)(k), RSMo, and 19 CSR 30-1.002.1(B)(1)(K).

22. Morphine is a Schedule II controlled substance pursuant to § 195.017.4(1)(a)(m), RSMo, and 19 CSR 30-1.002.1(B)(1)(M).

23. Phenobarbital is a Schedule IV controlled substance pursuant to § 195.017.8(2)(pp), RSMo, and 19 CSR 30-1.002.1(D)(2)(PP).

24. Buprenorphine is a Schedule III controlled substance pursuant to § 195.017.6(5), RSMo Cum. Supp. 2008.

25. Butorphanol is a Schedule IV controlled substance pursuant to § 195.017.8(5)(a), RSMo Cum. Supp. 2008, and 19 CSR 30-1.002.1(D)(5)(B).

26. Diazepam is a is a Schedule IV controlled substance pursuant to § 195.017.8(2)(n), RSMo Cum. Supp. 2008, and 19 CSR 30-1.002.1(D)(2)(N).

27. Ketamine is a Schedule III controlled substance pursuant to § 195.017.6(2)(e), RSMo Cum. Supp. 2008, and CSR 30-1.002.1(C)(2)(F).

28. Midazolam is a Schedule IV controlled substance pursuant to § 195.017.8(2)(hh), RSMo, and 19 CSR 30-1.002.1(D)(2)(HH).

JOINT PROPOSED CONCLUSIONS OF LAW

29. 20 CSR 2220-2.090 states in part:

(2) The responsibilities of a pharmacist-in-charge, at minimum, will include:

* * *

(N) The pharmacist-in-charge will be responsible for the supervision of all pharmacy personnel, to assure full compliance with the pharmacy laws of Missouri;

* * *

(R) Security is sufficient to insure the safety and integrity of all legend drugs located in the pharmacy;

* * *

(W) Assure full compliance with all state and federal drug laws and rules [.]

30. 20 CSR 2220-2.010(1) states in part:

(H) Pharmacies must maintain adequate security in order to deter theft of drugs by personnel or the public. Sufficient alarm systems or locking mechanisms must be in place if the pharmacy is located in a facility into which the public has access and the pharmacy's hours of operation are different from those of the remainder of the facility [.]

31. Therefore, there is cause to discipline pursuant to § 338.055, RSMo, which states in pertinent part:

* * *

2. The board may cause a complaint to be filed with the Administrative Hearing Commission as provided by Chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered his certificate or registration or authority, permit or license for any one or any combination of the following causes:

* * *

(6) Violation of, or assisting or enabling any person to

violate, any provisions of this chapter, or of any lawful rule or regulation adopted pursuant to this chapter;

* * *

(15) Violation of the drug laws or rules and regulations of this state, any other state or the federal government [.]

II. REQUEST FOR CONSENT ORDER

The parties request that the Administrative Hearing Commission issue a Consent Order finding that grounds exist under §.338.055.2(6) and (15), RSMo, for the Board to take disciplinary action against Richmond's Pharmacist license, and, pursuant to §621.110, certify the record in this matter to Board to conduct a hearing upon the issue of appropriate disciplinary action.

The Board agrees that after conducting the disciplinary hearing, the Board will not revoke or suspend Richmond's pharmacist license, nor impose probation for a period greater than 3 years.

III. FUTHER TERMS AND CONDITIONS

32. This Joint Stipulation does not bind the Board or restrict the remedies available to it concerning any future violations by Richmond of Chapter 338, RSMo, as amended, or the regulations promulgated thereunder, or of the terms and conditions of this Joint Stipulation.

33. This Joint Stipulation does not bind the Board or restrict the remedies available to it concerning facts or conduct not specifically mentioned in the Complaint or this Joint Stipulation that are either now known to the Board or may be discovered.

34. Each party agrees to pay all their own fees and expenses incurred as a result of this case, its litigation, and/or its settlement.

35. The terms of this Joint Stipulation are contractual, legally enforceable, and binding, not merely recital. Except as otherwise contained herein, neither this Joint Stipulation nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

36. The parties to this Joint Stipulation understand that the Board will maintain this Joint Stipulation as an open record of the Board as required by Chapters 338, 610, and 324, RSMo, as amended.

37. Richmond together with her, heirs, assigns, agents, employees, representatives and attorneys, does hereby waive, release, acquit and forever discharge the Board, its respective members, employees, agents and attorneys including former members, employees, agents and attorneys, of, or from any liability, claim, actions, causes of action, fees, costs, expenses and compensation, including, but not limited to, any claim for attorney's fees and expenses, whether or not now known or contemplated, including, but not limited to, any claims pursuant to § 536.087, RSMo, as amended, or any claim

arising under 42 U.S.C. § 1983, which now or in the future may be based upon, arise out of, or relate to any of the matters raised in this case or its litigation, or from the negotiation or execution of this Joint Stipulation. The parties acknowledge that this paragraph is severable from the remaining portions of the Joint Stipulation in that it survives in perpetuity even in the event that any court or administrative tribunal deems this agreement or any portion thereof void or unenforceable.

III. CONCLUSION

In consideration of the foregoing, the parties consent to the entry of record and approval of this Joint Stipulation and the certification of the record in this matter to Board to conduct a hearing upon the issue of appropriate disciplinary action. The parties consent to the termination of any further proceedings before the Commission based upon the complaint filed by the Board in the above-captioned cause.

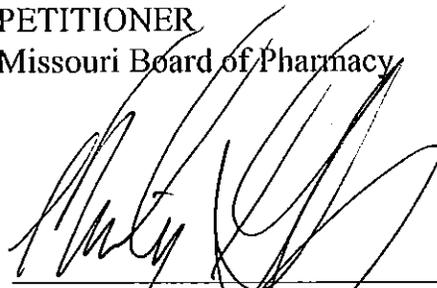
RESPONDENT



Cynthia Richmond

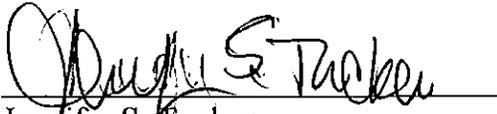
PETITIONER

Missouri Board of Pharmacy



Kimberly Grinston Date
Executive Director

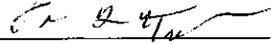
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